

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SCOTT KINGSTON,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION, a New York corporation,

Defendant.

NO. 2:19-CV-01488-MJP

JOINT PRETRIAL ORDER

Plaintiff Scott Kingston and Defendant International Business Machines Corporation jointly submit this proposed pretrial order in accordance with Western District of Washington Local Rule 16(e) and the Court's April 23, 2020 Order Setting Trial Date & Related Dates (Dkt. No. 29).

I. JURISDICTION

This Court has jurisdiction over this matter and all claims under 28 U.S.C. § 1332(a)(1) because there is complete diversity among the parties and the amount in controversy is greater than \$75,000.

II. CLAIMS AND DEFENSES

Plaintiff will pursue the following claims for relief at trial:

1. Retaliation in violation of RCW 49.60.210 based on IBM's termination of Kingston after he opposed IBM's discriminatory treatment of a Black employee.
2. Wrongful termination in violation of public policy based on IBM's termination

1 of Kingston after he opposed IBM's discriminatory treatment of a Black employee.

2 3. Wrongful termination in violation of public policy based on IBM's termination
3 of Kingston after he opposed IBM's withholding of wages from an employee.

4 4. Age discrimination in violation of RCW 49.60.180.

5 5. Unjust enrichment based on IBM's failure to pay Kingston the commissions to
6 which he was entitled for sales made in Quarter 1 of 2018.

7 Defendant contends that it may pursue the following affirmative defenses at trial:

8 1. Plaintiff's claims are barred, in whole or in part, by the doctrine of after-
9 acquired evidence.¹

10 2. Plaintiff failed to properly mitigate his damages.²

11 3. If the jury concludes that any protected activity motivated, even in part, any
12 employment decision challenged by Plaintiff, which Defendant expressly denies,
13 Defendant affirmatively states that the same decision would have been made
14 without consideration of any protected status or activity.³

15 **III. UNDISPUTED FACTS**

16 The Parties stipulate to the following facts:

17 1. Kingston was employed by IBM from October 2000 through April 16, 2018.

18 2. Before his termination, Kingston was a second-line manager for the embedded
19 solutions agreement (ESA) team, a sales team responsible for deals involving IBM software
20 that is embedded in another company's product.

21 3. Kingston directly supervised first-line managers, including Andre Temidis and
22 Greg Mount, who in turn supervised sales representatives.

23 4. Temidis supervised Nick Donato.

24 5. Mount supervised Jerome Beard.

25
26 ¹ This is Defendant's contention only. This defense is the subject of a motion in limine. *See* Dkt. No. 78.

27 ² This is Defendant's contention only. This defense is the subject of a motion in limine. *See* Dkt. No. 78.

³ This is Defendant's contention only. This defense is the subject of a motion in limine. *See* Dkt. No. 78.

8. Kingston and Temidis reviewed and approved a \$1.6 million payment to Donato for the SAS deal.

11. After Beard closed a large deal in September 2017 with IBM customer HCL Technologies (HCL), IBM reduced his commission from approximately \$1.4 million to \$205,000.

13. Jeff Larkin, a member of IBM's internal audit team, investigated Kingston, Temidis, and Lee.

15. Kingston was 58 years old when IBM terminated him.

Plaintiff alleges the following facts:

3. Kingston engaged in protected activity when he repeatedly told his supervisors that he believed IBM's decision to cap Beard's commissions was discriminatory and a violation of IBM's policy on uncapped commissions.

4. By opposing and reporting IBM's discriminatory treatment of Beard, Kingston furthered Washington state's clear public policy against racial discrimination.

1 5. By opposing and reporting IBM's unlawful withholding of wages owed to
2 Beard, Kingston furthered Washington state's clear public policy in favor of ensuring the
3 payment to employees of the full amount of wages earned.

4 6. IBM employees involved in the investigation and termination of Kingston were
5 aware that Kingston opposed the company's discriminatory treatment of Beard and unlawful
6 withholding of his wages.

7 7. Kingston's opposition to IBM's discriminatory treatment of Beard was a
8 substantial factor in IBM's decision to terminate Kingston.

9 8. Kingston's opposition to IBM's withholding of wages owed to Beard was a
10 substantial factor in IBM's decision to terminate Kingston.

11 9. IBM's adverse actions against Kingston, including his termination, jeopardize
12 the clear mandates of Washington's public policy against racial discrimination.

13 10. IBM's adverse actions against Kingston, including his termination, jeopardize
14 the clear mandates of Washington's public policy against withholding wages owed to
15 employees.

16 11. Age discrimination was a substantial factor in IBM's decision to terminate
17 Kingston.

18 12. Kingston's position remained open after IBM terminated him, and IBM sought
19 applicants for the position with qualifications like those of Kingston.

20 13. Kingston conferred a benefit on IBM during the first quarter of 2018 through his
21 labor, experience, and skills as a manager of sales employees.

22 14. IBM benefited at the expense of Kingston by receiving his labor, experience,
23 and skills in the first quarter of 2018.

24 15. IBM was unjustly enriched by its refusal to pay commissions to Kingston for
25 deals that his salespersons closed in the first quarter of 2018.

26 16. As a result of IBM's unlawful acts, Kingston has suffered damages in the form
27

1 of lost backpay and benefits.

2 17. As a result of IBM's unlawful acts, Kingston will continue to suffer damages in
3 the form of lost future pay and benefits.

4 18. As a result of IBM's unlawful acts, Kingston has suffered damages in the form
5 of emotional distress.

6 IBM alleges the following facts:

7 1. Kingston did not tell his supervisors that he believed IBM's decision to adjust
8 Beard's commissions was discriminatory or an unlawful withholding of wages.

9 2. The IBM employees who requested and conducted the investigation into the
10 commissions paid on the SAS deal were not aware that Kingston had engaged in any protected
11 activity.

12 3. The IBM employees who made and approved the recommendation to terminate
13 Kingston's employment were not aware that Kingston had engaged in any protected activity.

14 4. Kingston's alleged opposition to IBM's treatment of Beard was not a factor in
15 IBM's decision to terminate Kingston.

16 5. Age discrimination was not a factor in IBM's decision to terminate Kingston.

17 6. IBM paid Kingston all commissions he was due per the terms of his incentive
18 plan related to deals closed in the first quarter of 2018.

19 7. IBM did not cause Kingston to suffer any damages. Further, even if Kingston is
20 entitled to recover back pay, Kingston's damages should be reduced (and any request for front
21 pay eliminated) due to Kingston's failure to mitigate his damages.

22 **V. ISSUES OF LAW**

23 The following are issues of law to be determined by the Court:

24 1. Whether Kingston has established a prima facie case of retaliation.

25 2. Whether Kingston has established a prima facie case of wrongful termination in
26 violation of public policy.

3. Whether Kingston has established a prima facie case of age discrimination.

4. Whether genuine issues of material fact exist as to Kingston's assertion that IBM's purported non-discriminatory ground for terminating him was pretextual.

5. Whether genuine issues of material fact exist as to Kingston's assertion that IBM was unjustly enriched when it refused to pay commissions to Kingston for deals closed in the first quarter of 2018.

6. Whether RCW 49.60.030 contains a clear mandate of public policy against racial discrimination.

7. Whether RCW 49.52.050 contains a clear mandate of public policy in favor of the full payment of wages owed to employees.

8. In addition, there are motions in limine before the Court filed by both parties.

VI. PLAINTIFF'S WITNESSES

Plaintiff names the following witnesses for trial, all of whom will or possibly might testify in open court by contemporaneous transmission from a different location:

WITNESS	CONTACT INFORMATION	CONTENT OF TESTIMONY	WILL TESTIFY	POSSIBLE WITNESS ONLY
Scott Kingston	c/o Matthew Lee and Jeremy Williams Whitfield Bryson & Mason, LLP 900 W. Morgan Street Raleigh, NC 27603 (919) 600-5000	Expected to testify regarding IBM's disparate treatment of Jerome Beard and Nick Donato; his complaints of the same to IBM; IBM's policies and procedures regarding the payments of commissions; and the damages he suffered as a result of IBM's wrongful termination of him.	X	

WITNESS	CONTACT INFORMATION	CONTENT OF TESTIMONY	WILL TESTIFY	POSSIBLE WITNESS ONLY
Theresa Kingston	c/o Matthew Lee and Jeremy Williams Whitfield Bryson & Mason, LLP 900 W. Morgan Street Raleigh, NC 27603 (919) 600-5000	Expected to testify regarding the damages suffered by Kingston as a result of IBM's wrongful termination of him.	X	
Erick C. West, M.A.	c/o Matthew Lee and Jeremy Williams Whitfield Bryson & Mason, LLP 900 W. Morgan Street Raleigh, NC 27603 (919) 600-5000	Expected to testify regarding the damages suffered by Kingston as a result of IBM's wrongful termination of him.	X	
Andre Temidis	c/o Matthew Lee and Jeremy Williams Whitfield Bryson & Mason, LLP 900 W. Morgan Street Raleigh, NC 27603 (919) 600-5000	Expected to testify regarding IBM's disparate treatment of Jerome Beard and Nick Donato; his complaints of the same to IBM; IBM's policies and procedures regarding the payments of commissions; and IBM's wrongful termination of him.		X

WITNESS	CONTACT INFORMATION	CONTENT OF TESTIMONY	WILL TESTIFY	POSSIBLE WITNESS ONLY
Michael Lee	c/o Matthew Lee and Jeremy Williams Whitfield Bryson & Mason, LLP 900 W. Morgan Street Raleigh, NC 27603 (919) 600-5000	Expected to testify regarding IBM's disparate treatment of Kami Nazem; his complaints of the same to IBM; IBM's policies and procedures regarding the payments of commissions; and IBM's wrongful termination of him.		X
Nick Donato	Contact information known to IBM	Expected to testify regarding the SAS deal; IBM's commissions policies; and his commissions from the SAS deal.	X	
Jerome Beard	c/o Matthew Lee and Jeremy Williams Whitfield Bryson & Mason, LLP 900 W. Morgan Street Raleigh, NC 27603 (919) 600-5000	Expected to testify regarding IBM's disparate treatment of him, including the lawsuit that he filed against IBM regarding its disparate treatment; and IBM's commissions policies.	X	
Greg Mount	c/o Justin R. Barnes Kelli N. Church 171 17th Street NW, Suite 1200 Atlanta, Georgia 30363 (404) 525-8200	Expected to testify regarding IBM's disparate treatment of Jerome Beard; Mike Lee's complaints of disparate treatment of Kazi Nazem; and IBM's commissions policies.	X	

WITNESS	CONTACT INFORMATION	CONTENT OF TESTIMONY	WILL TESTIFY	POSSIBLE WITNESS ONLY
Bob Finnecy	Contact information known to IBM		X	
Brian Mulada	c/o Justin R. Barnes Kelli N. Church 171 17th Street NW, Suite 1200 Atlanta, Georgia 30363 (404) 525-8200	Expected to testify regarding IBM's disparate treatment of Jerome Beard and IBM's commissions policies.		X
Rose Nunez	c/o Justin R. Barnes Kelli N. Church 171 17th Street NW, Suite 1200 Atlanta, Georgia 30363 (404) 525-8200	Expected to testify regarding IBM's commissions policies; IBM's termination of Kingston; and the SAS deal.	X	
David Mitchell	c/o Justin R. Barnes Kelli N. Church 171 17th Street NW, Suite 1200 Atlanta, Georgia 30363 (404) 525-8200	Expected to testify regarding IBM's commissions policies; IBM's disparate treatment of Jerome Beard; IBM's commissions policies; and IBM's termination of Kingston.	X	
Dorothy Copeland	Contact information known to IBM	Expected to testify regarding IBM's commissions policies; IBM's disparate treatment of Jerome Beard; IBM's commissions policies; and IBM's termination of Kingston.	X	

WITNESS	CONTACT INFORMATION	CONTENT OF TESTIMONY	WILL TESTIFY	POSSIBLE WITNESS ONLY
Stephen Leonard	c/o Justin R. Barnes Kelli N. Church 171 17th Street NW, Suite 1200 Atlanta, Georgia 30363 (404) 525-8200	Expected to testify regarding IBM's commissions policies and IBM's termination of Kingston.		X
Jeff Larkin	c/o Justin R. Barnes Kelli N. Church 171 17th Street NW, Suite 1200 Atlanta, Georgia 30363 (404) 525-8200	Expected to testify regarding IBM's termination of Kingston and IBM's commissions policies.	X	
Linda Kenny	c/o Justin R. Barnes Kelli N. Church 171 17th Street NW, Suite 1200 Atlanta, Georgia 30363 (404) 525-8200	Expected to testify regarding IBM's termination of Kingston and IBM's commissions policies.	X	
Lisa Mihalik	c/o Justin R. Barnes Kelli N. Church 171 17th Street NW, Suite 1200 Atlanta, Georgia 30363 (404) 525-8200	Expected to testify regarding IBM's termination of Kingston and IBM's commissions policies		X

WITNESS	CONTACT INFORMATION	CONTENT OF TESTIMONY	WILL TESTIFY	POSSIBLE WITNESS ONLY
Cindy Alexander	c/o Justin R. Barnes Kelli N. Church 171 17th Street NW, Suite 1200 Atlanta, Georgia 30363 (404) 525-8200	Expected to testify regarding IBM's termination of Kingston; IBM's commissions policies; and the SAS deal.	X	
Russell Mandel	Contact information known to IBM	Expected to testify regarding IBM's termination of Kingston and IBM's commissions policies.		X
John Teltsch	c/o Justin R. Barnes Kelli N. Church 171 17th Street NW, Suite 1200 Atlanta, Georgia 30363 (404) 525-8200	Expected to testify regarding IBM's termination of Kingston and IBM's commissions policies.		X
Maria Lipner	c/o Justin R. Barnes Kelli N. Church 171 17th Street NW, Suite 1200 Atlanta, Georgia 30363 (404) 525-8200	Expected to testify regarding IBM's commissions policies.	X	
Karla Johnson	c/o Justin R. Barnes Kelli N. Church 171 17th Street NW, Suite 1200 Atlanta, Georgia 30363 (404) 525-8200	Expected to testify regarding IBM's commissions policies; commissions paid on the SAS deal; IBM's disparate treatment of Beard; and IBM's termination of Kingston.	X	

Pursuant to Rule 32, Plaintiff is also submitting deposition designations for Charlie Jeffrey Larkin, Karla Johnson, and Linda K. Kenny, all of whom were designated to testify on behalf of IBM in accordance with Rule 30(b)(6). The parties have agreed that because of scheduling issues, Nick Donato will be examined in advance of trial, and video of his testimony will be played at trial. Plaintiff reserves the right to call any witnesses identified by either party during the court of discovery that are not listed above.

VII. PLAINTIFF'S TRIAL EXHIBITS

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
1	IBM Meeting Minutes (Operations/Business Controls) - October 27, 2017 (Dep. Ex. 147)	IBM-Kingston003 941-3942	X		
2	IBM General Work Papers (backup on new review procedures) (Dep. Ex. 148)	IBM-Kingston003 917-3926	X		
3	IBM Meeting Minutes (Rick Martinotti) - December 14, 2017	IBM-Kingston003 957-3959	X		
4	IBM Meeting Minutes (Dave Schallmo) - January 9, 2018	IBM-Kingston003 915-3916	X		
5	IBM Meeting Minutes (Debbie Huff) - January 9, 2018	IBM-Kingston003 927-3928	X		
6	IBM Meeting Minutes (Diego	IBM-Kingston003	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	Soares) - January 10, 2018	929-3930			
7	IBM Meeting Minutes (William Sherrin) - January 16, 2018	IBM- Kingston003 976-3978	X		
8	IBM Meeting Minutes (Bill Beroza) - January 17, 2018	IBM- Kingston003 979-3981	X		
9	IBM Meeting Minutes (Nick Donato) - January 19, 2018 (Dep. Ex. 145)	IBM- Kingston003 970-3972	X		
10	IBM Meeting Minutes (Pam Carroll) - January 22, 2018 (Dep. Ex. 143)	IBM- Kingston003 943-3944	X		
11	General Workpapers for Investigation Number 17-98- 436 (Additional information from I&C)	IBM- Kingston003 792-3914	X		
12	IBM Meeting Minutes (Andre Temidis) - January 23, 2018 (Dep. Ex. 146)	IBM- Kingston003 960-3962	X		
13	IBM Meeting Minutes (Ellen Culliton)- February 5, 2018	IBM- Kingston003 931-3932	X		
14	IBM Meeting Minutes (Mike Lee) – February 8, 2018 (Dep. Ex. 133)	IBM- Kingston003 966-3969	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
15	IBM Meeting Minutes Email Chain (Karla Johnson) – February 14, 2018 (Dep. Ex. 134)	IBM-Kingston003 933-3940	X		
16	IBM Meeting Minutes Email Chain (Ellen Culliton) – February 14, 2018 (Dep. Ex. 132)	IBM-Kingston004 012-4014	X		
17	IBM Meeting Minutes Email Chain (Suresh Patel) – February 15, 2018 (Dep. Ex. 139)	IBM-Kingston003 945-3947	X		
18	IBM Meeting Minutes (Suresh Patel) - February 15, 2018 (Dep. Ex. 144)	IBM-Kingston003 963-3965	X		
19	IBM General Workpapers for Investigation Number 17-98-436 (Donato Departure/HPC Info)	IBM-Kingston003 948-3950	X		
20	IBM General Workpapers for Investigation Number 17-98-436 (ESA)	IBM-Kingston003 955-3956	X		
21	IBM General Workpapers for Investigation Number 17-98-	IBM-Kingston003 982-3983	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	436 (justification by Kingston)				
22	IBM General Workpapers for Investigation Number 17-98- 436 (Lee followup/ response)	IBM- Kingston003 984-4011	X		
23	IBM General Workpapers for Investigation Number 17-98- 436 (quota guidance)	IBM- Kingston004 015-4016	X		
24	IBM General Workpapers for Investigation Number 17-98- 436 (revenue recognition confirmation)	IBM- Kingston004 017-4055	X		
25	IBM General Workpapers for Investigation Number 17-98- 436 (upline management pay approval)	IBM- Kingston004 058-4060	X		
26	IBM General Workpapers for Investigation Number 17-98- 436 (100% club info)	IBM- Kingston003 791	X		
27	IBM General Workpapers for Investigation Number 17-98- 436 (Donato HR Status)	IBM- Kingston003 951-3952	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
28	IBM Investigation Profile Number – 17-98-436	IBM-Kingston003 953-3954	X		
29	Document of Case Status for Scott Kingston (Dep. Ex. 55)	IBM-Kingston001 652-1653	X		
30	Document of Case Status for Mike Lee (Dep. Ex. 56)	IBM-Kingston003 294-3295		FRE 401 FRE 402 FRE 403	
31	Document of Case Status for Andre Temidis (Dep. Ex. 57)	IBM-Kingston003 292-3293	X		
32	Copy of IBM Investigation Report (Dep. Ex. 47)	IBM-Kingston001 659-1662	X		
33	Case Notes - Scott Kingston (Dep. Ex. 53)	IBM-Kingston001 691-1695	X		
34	17-98-436 – Investigation Recommendations	IBM-Kingston004 061-4063	X		
35	Executive Summary – Investigation Number 17-98-436	IBM-Kingston004 064-4065	X		
36	Handwritten Notes (Dep. Ex. 40)	IBM-Kingston001 654	X		
37	Handwritten Notes (Dep. Ex. 46)	IBM-Kingston001 670	X		
38	Handwritten Document (Dep. Ex. 49)	IBM-Kingston001 671	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
39	Handwritten Document (Dep. Ex. 54)	IBM-Kingston003145	X		
40	Allegation Review Board- Allegation Number 17-1109, Investigation Number 17-98-436 - October 16, 2017	IBM-Kingston004056-4057	X		
41	EEOC Determination (Dep. Ex. 119)	N/A		FRE 401 FRE 402 FRE 403 FRE 404 FRE 801 FRE 802	
42	Email from Lynne Driscoll to Greg Mount – July 20, 2016 (Beard Dep. Ex. 96)	KINGSTON000224		FRE 401 FRE 402 FRE 403 FRE 404	
43	Email from Luiza Magon Saddy to Scott Kingston - May 2, 2017 (Dep. Ex. 33)	IBM-Kingston003301	X		
44	Email from Bob Finnecy to Sean Fanning – July 1, 2017 (Dep. Ex. 135)	IBM-Kingston001696-1700	X		
45	Email from Bob Finnecy to Ken Stevens – July 1, 2017 (Dep. Ex. 136)	IBM-Kingston001701-1706	X		
46	Email from Dorothy	IBM-Kingston001	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	Copeland to Bob Finnecey - July 3, 2017 (Dep. Ex. 60)	736-1740			
47	Email from Dorothy Copeland to Ken Stevens - July 3, 2017 (Dep. Ex. 61)	IBM-Kingston001 747-1751	X		
48	Email from Scott Kingston to Andre Temidis – July 3, 2017 (Dep. Ex. 62)	IBM-Kingston003 378-3385	X		
49	Email from Karla Johnson to Richard Whitmore – August 8, 2017 (Dep. Ex. 111)	IBM-Kingston001 890-1911; IBM-Kingston002 963-77	X		
50	Email from Stephanie Yuri Kajishima to Mike Lee - August 29, 2017 (Dep. Ex. 34)	IBM-Kingston002 121-2126	X		
51	“Realtime Chat” from Brian Mulada to Inhi Suh – September 21, 2017 (Beard Dep. Ex. 26)	IBM-Beard003152 -3167	X		
52	Email from Jerome Beard to Yulia Aleshina re Fw HCL ESA deployment estimate Follow Up – October 2, 2017 (Beard	IBM-Beard001615 -1628	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	Dep. Ex. 97 Copeland)				
53	Email from Brian Mulada to Maria Lipner – October 8, 2017 (Beard Dep. Ex. 16)	IBM- Beard001662 -1663	X		
54	Email from Flavia Real Pereira De Carvalho to Karla Johnson – October 19, 2017 (Beard Dep. Ex. 51)	IBM- Beard003122 -3128	X		
55	Email from Karla Johnson to Jerome Beard – October 20, 2017 (Beard Dep. Ex. 77)	IMB- Beard000466	X		
56	Email from Rick Martinotti to Karla Johnson – October 23, 2017 (Dep. Ex. 100)	IBM- Kingston002 771-2780	X		
57	Email from Scott Kingston to Karla Johnson – October 23, 2017 (Dep. Ex. 101)	IBM- Kingston002 781-2788	X		
58	Email from Karla Johnson to Flavia Dames de Arruda Raffo – Jerome Beard Information – October 30, 2017 (Beard	IBM- Beard003379 -3389	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	Dep. Ex. 78)				
59	Email from Karla Johnson to Jim Sanders – November 1, 2017 (Dep. Ex. 103)	IBM- Kingston001 994-1997	X		
60	Email from Karla Johnson to Brian Mulada – November 9, 2017 (Beard Dep. Ex. 19)	IBM- Beard001687 -1691		FRE 401 FRE 402 FRE 403 FRE 404	
61	Email from Brian Mulada to Karla Johnson – November 11, 2017 (Beard Dep. Ex. 20)	IBM- Beard001713 -1717		FRE 401 FRE 402 FRE 403 FRE 404	
62	Email from Viviane Blanco to Taina Costa de Magalhaes – November 13, 2017 (Beard Dep. Ex. 79)	IBM- Beard003199 - 3210		FRE 401 FRE 402 FRE 403 FRE 404	
63	Email from Rose Nunez to Brian Mulada re: fw: Private – Email #3 (do not distribute) – November 14, 2017 (Beard Dep. Ex. 29)	IBM- Beard000474 -480	X		
64	Email from Paula Soffiatti to Karla Johnson – November 16, 2017 (Dep. Ex. 109)	IBM- Kingston001 555-1561	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
65	Email from Greg Mount to Jerome Beard – November 16, 2017 (Beard Dep. Ex. 52)	IBM-Beard000462-463	X		
66	Email from Kami Nazem to Greg Mount – November 17, 2017 (Dep. Ex. 104)	IBM-Kingston003448-3449		FRE 401 FRE 402 FRE 403 FRE 404 FRE 801 FRE 802	
67	Email from Rose Nunez to Scott Kingston – November 17, 2017 (Beard Dep. Ex. 10)	IBM-Beard001750-1752	X		
68	Email from Karla Johnson to Dave Mitchell – November 17, 2017 (Beard Dep. Ex. 11)	IBM-Beard001757-1762	X		
69	Email from Scott Kingston to Rose Nunez re fw: Open Door vs Panel Review – November 17, 2017 (Beard Dep. Ex. 45)	IBM-Beard001753-1756	X		
70	Email from Brian Mulada to Rose Nunez re URGENT: HCL Deal – November 21, 2017 (Beard Dep. Ex. 30)	IBM-Beard000481-482	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
71	Email from Scott Kingston to Rose Nunez re HCL/NDA Deals – November 21, 2017 (Beard Dep. Ex. 46)	IBM-Beard003190-3191	X		
72	Email from Jerome Beard to Rose Nunez re fw Global Checklist has been approved – November 22, 2017 (Beard Dep. Ex. 36)	IBM-Beard000483-484	X		
73	Email from Scott Kingston to Dave Mitchell and Rose Nunez - January 5, 2018 (Dep. Ex. 63)	IBM-Kingston002055-2056	X		
74	Email from Dave Mitchell to Kingston – January 6, 2018 (Beard Dep. Ex. 12)	IBM-Beard002023-2024	X		
75	Email from Jeff Larkin to Debbie Huff - January 10, 2018 (Dep. Ex. 32)	IBM-Kingston002574	X		
76	Email from Leanne Clarke to Dave Mitchell – January 11, 2018 (Beard Dep. Ex. 13)	IBM-Beard002025-2032		FRE 401 FRE 402 FRE 403 FRE 404	

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
77	Email from Karla Johnson to Taina Costa de Magalhaes – January 11, 2018 (Beard Dep. Ex. 86)	IBM-Beard003225-3227	X		
78	Email from Jeff Larkin to Mary Konet – January 16, 2018 (Dep. Ex. 79)	IBM-Kingston002063-2064	X		
79	Email from Dave Mitchell to Jessica Porto Da Motta – January 16, 2018 (Beard Dep. Ex. 14)	IBM-Beard003044-3055	X		
80	Email from Jeff Larkin to Steve Arnold – January 17, 2018 (Dep. Ex. 80)	IBM-Kingston002065-2067	X		
81	Email from Jeff Larkin to Clement Quintyne – January 17, 2018 (Dep. Ex. 81)	IBM-Kingston002068-2070	X		
82	Email from Jeff Larkin to Steve Kingston – January 17, 2018 (Dep. Ex. 82)	IBM-Kingston002580-2581	X		
83	Emails from Karla Johnson to Mario Vaz Re ESA Commission Adj Required – January 17, 2018 (Beard Dep. Ex. 83)	IBM-Beard000485-492	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	84)				
84	Email from Jeff Larkin to Deron Rossi – January 22, 2018 (Dep. Ex. 83)	IBM-Kingston002 078-2080	X		
85	Email from Jeff Larkin to Diefenbach – January 25, 2018 (Dep. Ex. 84)	IBM-Kingston002 092-2094	X		
86	Email from Scott Kingston Jeff Larkin – January 26, 2018 (Dep. Ex. 78)	IBM-Kingston002 592	X		
87	Email from Scott Kingston to Jeff Larkin - January 26, 2018 (Dep. Ex. 66)	IBM-Kingston002 593-2595	X		
88	Email from Karla Johnson to Brian Mulada re HCL 4Q – January 29, 2018 (Beard Dep. Ex. 31)	IBM-Beard003176 -3178	X		
89	Email from Jeff Larkin to Kandis Patch – February 8, 2018 (Dep. Ex. 85)	IBM-Kingston002 098-2100	X		
90	Email from Mike Lee to Jeff Larkin - February 9, 2018 (Dep. Ex. 72)	IBM-Kingston002 129-2131		FRE 401 FRE 402 FRE 403 FRE 801 FRE 802	
91	Email from Jeff Larkin to Pam Carroll – February 9, 2018	IBM-Kingston002 132	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	(Dep. Ex. 86)				
92	Email from Julie Heeg to Dominic Agostino – February 13, 2018 (Beard Dep. Ex. 98 Copeland)	IBM-Beard002041-2044	X		
93	Email from Karla Johnson to Jeff Larkin – February 15, 2018 (Dep. Ex. 87)	IBM-Kingston002607-2612	X		
94	Email from Tamara Franklin to Dorothy Copeland - February 27, 2018 (Dep. Ex. 65)	IBM-Kingston002199-2207	X		
95	Email from Taneisa Butler to Dorothy Copeland - February 28, 2018 (Dep. Ex. 37)	IBM-Kingston002216-2222	X		
96	Email from Linda Kenny to CMA North America DAW Reviews - March 5, 2018 (Dep. Ex. 42)	IBM-Kingston001655-1658	X		
97	Email from Taina Costa de Magelhaes to Paula Soffiatti – March 6, 2018 (Beard Dep. Ex.	IBM-Beard003231	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	89)				
98	Email from Jeff Larkin to Linda Kenny - March 9, 2018 (Dep. Ex. 39)	IBM-Kingston002285	X		
99	Email from Jerome Beard to Scott Kingston – 3-9-2018 (Beard Dep. Ex. 54)	IBM-Beard002053-2056	X		
100	Email from Karla Johnson to Dorothy Copeland – March 9, 2018 (Beard Dep. Ex. 99 Copeland)	IBM-Beard003194-3198	X		
101	Email from John Teltsch to Dorothy Copeland - March 13, 2018 (Dep. Ex. 67)	IBM-Kingston002291-2295	X		
102	Email from John Teltsch to Dorothy Copeland - March 14, 2018 (Dep. Ex. 69)	IBM-Kingston002302-2307	X		
103	Email from Dorothy Copeland to John Teltsch - March 14, 2018 (Dep. Ex. 70)	IBM-Kingston002328-2334	X		
104	Email from Linda Kenny to Dorothy Copeland - March 15, 2018 (Dep. Ex. 43)	IBM-Kingston001201-1203	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
105	Email from Karla Johnson to Dorothy Copeland – March 15, 2018 (Beard Dep. Ex. 100 Copeland)	IBM-Beard002962-2964	X		
106	Email from Linda Kenny to Dominic Agostino - March 18, 2018 (Dep. Ex. 44)	IBM-Kingston002340-2344	X		
107	Email from Lisa Mihalik to Linda Kenny - March 18, 2018 (Dep. Ex. 45)	IBM-Kingston002345-2349	X		
108	Email from Jeff Larkin to Linda Kenny – April 2, 2018 (Dep. Ex. 88)	IBM-Kingston002711-2712	X		
109	Email from Karla Johnson to Meyer – April 2, 2018 (Dep. Ex. 105)	IBM-Kingston003139		FRE 401 FRE 402 FRE 403 FRE 404 FRE 407 FRE 501 FRE 502	
110	Email from Cynthia Alexander to Linda Kenny and Jeff Larkin - April 4, 2018 (Dep. Ex. 48)	IBM-Kingston002358-2364	X		
111	Email from Brian Mulada to Dharini Ingrum – April 5, 2018 (Beard Dep. Ex.	IBM-Beard002057-2059	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	32)				
112	Email from Dorothy Copeland to Linda Kenny and Dominic Agostino - April 12, 2018 (Dep. Ex. 71)	IBM-Kingston001 206-1207		FRE 401 FRE 402 FRE 403	
113	Email from Scott Kingston to Dorothy Copeland – April 16, 2018 (Dep. Ex. 73)	IBM-Kingston001 166-1168	X		
114	Email from Linda Kenny to Dominic Agostino - April 17, 2018 (Dep. Ex. 51)	IBM-Kingston002 402-2405	X		
115	Email from Dorothy Copeland to Linda Kenny - April 17, 2018 (Dep. Ex. 52)	IBM-Kingston002 406-2420	X		
116	Email from Scott Kinston to Appeals - April 18, 2018 (Dep. Ex. 27)	IBM-Kingston002 454-2458	X		
117	Email from Scott Kingston to Dave Mitchell re Achievement Validation October Cycle – Jerome Beard – April 18, 2018 (Beard Dep. Ex. 44)	KINGSTON 000010-11	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
118	Email from Scott Kingston to Dave Mitchell re Achievement Validation October Cycle – Jerome Beard – April 18, 2018 (Beard Dep. Ex. 50)	KINGSTON 000025-26	X		
119	Email from Bernadette Dugan to Appeals – April 19, 2018 (Dep. Ex. 140)	IBM- Kingston001 672-1688	X		
120	Emails Dorothy Copeland and Mark Barrett Re congratulations Best of IBM Honoree – April 20, 2018 (Beard Dep. Ex. 101 Copeland)	IBM- Beard002063 -2065	X		
121	Emails Karla Johnson and Linda Kenny Re SAS Commission Investigation – April 26, 2018 (Beard Dep. Ex. 102 Copeland)	IBM- Beard002975 -2982	X		
122	Email from Flavie Real Peneirs de Carvalho – April 27, 2018 (Beard Dep. Ex. 91 Johnson)	IBM- Beard003410 -3433	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
123	Email from Dorothy Copeland to Karla Johnson – April 30, 2018 (Dep. Ex. 74)	IBM-Kingston001 219-1224	X		
124	Email from Dorothy Copeland to Linda Magnaini – April 30, 2018 (Beard Dep. Ex. 103 Copeland)	IBM-Beard002983 -2990	X		
125	Email from Dorothy Copeland to Karla Johnson – May 11, 2018 (Dep. Ex. 75)	IBM-Kingston001 225-1241	X		
126	Emails Dorothy Copeland and Karla Johnson Confidential Re Fw SAS Commission Investigation – May 11, 2018 (Beard Dep. Ex. 90)	IBM-Beard003022 -3038	X		
127	Email from Dorothy Copeland to Dominic Agostino – May 16, 2018 (Dep. Ex. 76)	IBM-Kingston002 958-2960		FRE 401 FRE 402 FRE 403	
128	Email from Karla Johnson to Jeff Larkin and Pam Carroll – June 4, 2018 (Dep. Ex. 89)	IBM-Kingston002 963-2977		FRE 401 FRE 402 FRE 403	

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
129	Email from Jerome Beard to Greg Mount – July 17, 2018 (Beard Dep. Ex. 48)	BEARD 000027-28	X		
130	Email from Jeff Larkin to Nancy Lacivita – July 30, 2018 (Dep. Ex. 90)	IBM- Kingston002 559	X		
131	Email from L. Due to Nancy LaCivita re IBM Confidential: Beard Investigation Report – for your review/approval – October 1, 2018 (Beard Dep. Ex. 55)	IBM- Beard000443 -453		FRE 401 FRE 402 FRE 403 FRE 404	
132	Email from Dave Mitchell to Andre Temidis – Undated (Beard Dep. Ex. 4)	IBM- Beard003169 -3175		FRE 401 FRE 402 FRE 403 FRE 404	
133	Email from Karla Johnson to Rick Martinotti – Undated (Beard Dep. Ex. 43)	KINGSTON 000123	X		
134	Email from Flavia Real Pereira De Carvalho to Dave Mitchell – Undated (Beard Dep. Ex. 3)	IBM- Beard003168	X		
135	IBM	IBM-	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	Confidential: 2017 Performance Assessment for Scott Kingston (Dep. Ex. 41)	Kingston000 032-34			
136	IBM Overpayment Letter (Dep. Ex. 26)	Kingston 000399		FRE 401 FRE 402 FRE 403	
137	Beard IPL – 1H16 – 1-27- 2016 (Beard Dep. Ex.60)	IBM- Beard000392 -395	X		
138	Beard IPL – 2H16 – 7-7- 2016 (Beard Dep. Ex.61)	IBM- Beard000400 -407	X		
139	Beard IPL – 1H17 – 1-19- 2017 (Beard Dep. Ex.62)	IBM- Beard000408 -411	X		
140	Beard IPL – 2H17 – 7-7- 2017 (Beard Dep. Ex. 6)	IBM- Beard000096 -99	X		
141	2017 Performance Assessment for Jerome Beard - 2017 (Beard Dep. Ex. 53)	IBM- Beard000087 -90	X		
142	Field Management System - Incentive Statement	IBM- Beard000001 -3		FRE 401 FRE 402 FRE 403 FRE 404	
143	Case Management 1010297 – Employee claim discrimination	IBM- Beard000416 -444		FRE 401 FRE 402 FRE 403 FRE 404	

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	based on how his peers were paid for incentive dated July 20, 2018 (Beard Dep. Ex. 7)				
144	Payroll Spreadsheet for Jerome Beard – 1-4-2019 (Beard Dep. 58)	IBM- Beard000085 -86	X		
145	Deposition Transcript of John Dunderdale - May 6, 2019	N/A		FRE 401 FRE 402 FRE 403 FRE 404 FRE 602 FRE 701 FRE 801 FRE 802	
146	Beard Settlement Agreement	IBM- Kingston004 571-76		FRE 401 FRE 402 FRE 403 FRE 404 FRE 407 FRE 408	
147	CM&A North America Expense Account DAW Guidance Continuum, IBM Confidential (Dep. Ex. 36)	IBM- Kingston001 648-1650		FRE 401 FRE 402	
148	PowerPoint, Your 2017 Incentive Plan, Individual Quota Plan (IQP) - Managers - Updated July 17,	IBM- Kingston000 282-322	X		

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	2017 (Dep. Ex. 16)				
149	PowerPoint, Your 2017 Incentive Plan, Individual Quota Plan (IQP) - Employees - Updated July 17, 2017 (Beard Dep. Ex. 5)	Beard 000042	X		
150	2017 – 2H Sales Incentives – July 2017 (Beard Dep. Ex. 66)	N/A	X		
151	Organization/Roles Spreadsheet – Undated (Beard Dep. Ex. 88)	IBM-Beard003120	X		
152	Organization/Roles Spreadsheet - Undated (Beard Dep. Ex. 92)	IBM-Beard003455	X		
153	Achievement & Payment Review Pre-Checks - Undated (Beard Dep. Ex. 76)	IBM-Beard003181-3189	X		
154	IBM's Business Conduct Guidelines		X		
155	Beard – Order Granting in Part and Denying in Part IBM's MSJ (Dep. Ex. 122)	N/A		FRE 401 FRE 402 FRE 403 FRE 404 FRE 801 FRE 802	
156	Defendant's Objections and Responses to Plaintiff's First	N/A		FRE 401 FRE 402 FRE 602 FRE 801	

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
	Set of Interrogatories (Dep. Ex. 113)			FRE 802	
157	Defendant's Supplemental Objections and Responses to Plaintiff's First Set of Interrogatories (Dep. Ex. 114)	N/A		FRE 401 FRE 402 FRE 602 FRE 801 FRE 802	
158	Defendant's Objections and Responses to Plaintiff's Second Set of Interrogatories (Dep. Ex. 116)	N/A		FRE 401 FRE 402 FRE 602 FRE 801 FRE 802	
159	Defendant's Second Supplemental Objections and Responses to Plaintiff's First Set of Interrogatories (Dep. Ex. 115)	N/A		FRE 401 FRE 402 FRE 602 FRE 801 FRE 802	
160	Defendant's Objections and Responses to Plaintiff's Third Set of Interrogatories (Dep. Ex. 118)	N/A		FRE 401 FRE 402 FRE 602 FRE 801 FRE 802	
161	Defendant's Supplemental Objections and Responses to Plaintiff's Second Set of Interrogatories (Dep. Ex. 117)	N/A		FRE 401 FRE 402 FRE 602 FRE 801 FRE 802	

EX.	DESCRIPTION	DOC. ID	ADMISSIBILITY STIPULATED	AUTHENTICITY STIPULATED/ ADMISSIBILITY DISPUTED	AUTHENTICITY & ADMISSIBILITY DISPUTED
162	Karla Johnson's LinkedIn Profile (Dep. Ex. 96)	N/A	X		
163	Stephen Leonard LinkedIn Profile (Dep. Ex. 121)	N/A	X		
164	John Teltsch LinkedIn Profile (Dep. Ex. 124)	N/A	X		
165	Bob Finnecy LinkedIn Profile (Dep. Ex. 131)	N/A	X		
166	Lisa Mihalik LinkedIn Profile (Dep. Ex. 138)	N/A	X		
167	Cindy Alexander LinkedIn Profile (Dep. Ex. 142)	N/A	X		
168	Dave Mitchell's LinkedIn Profile – Undated (Beard Dep. Ex. 2)	N/A	X		
169	Photograph of 2017 ESA Trans Revenue Growth trophy awarded to Scott Kingston	N/A			FRE 401 FRE 402 FRE 901
170	Article published by The News & Observer titled "These managers claim IBM fired them after they argued a black salesman wasn't paid fairly"	N/A			FRE 401 FRE 402 FRE 403 FRE 404 FRE 602 FRE 801 FRE 802 FRE 901

2. Plaintiff reserves the right to use any demonstrative and illustrative exhibit as is necessary and regardless of whether it is designated as a trial exhibit in this Pretrial Statement or in the Pretrial Order.

3. Plaintiff reserves the right to use any exhibit for impeachment purposes regardless of whether it is designated as a trial exhibit in this Pretrial Statement or in the Pretrial Order.

4. Plaintiff reserves the right to designate additional exhibits for rebuttal purposes or otherwise for admission at trial.

VIII. DEFENDANT'S WITNESSES

The Court's planned handling of the trial will affect IBM's witness list. If the Court plans to conduct the trial via Zoom, IBM will likely have more witnesses testify live rather than via deposition testimony. As such, IBM has included certain witnesses as may call and has also provided deposition designations for those witnesses. IBM reserves the right to amend this list.

Witness	Address	Will Call	May Call
Scott Kingston	c/o Toby J. Marshall, WSBA #32726 Email: tmarshall@terrellmarshall.com Brittany J. Glass, WSBA #52095 Email: bglass@terrellmarshall.com TERRELL MARSHALL LAW GROUP PLLC 936 North 34th Street, Suite 300 Seattle, Washington 98103-8869 Telephone: (206) 816-6603 Matthew E. Lee Email: matt@whitfieldbryson.com Jeremy R. Williams Email: jeremy@whitfieldbryson.com WHITFIELD BRYSON LLP 900 W. Morgan Street Raleigh, North Carolina 27603		X

	Telephone: (919) 600-5000 Facsimile: (919) 600-5035		
Peter Nickerson	c/o Barry A. Johnsrud, WSBA #21952 Email: barry.johnsrud@jacksonlewis.com 520 Pike Street, Suite 2300 Seattle, Washington 98101 Telephone: (206) 405-0404 Facsimile: (206) 405-4450 Justin A. Barnes Email: justin.barnes@jacksonlewis.com Kelli N. Church Email: kelli.church@jacksonlewis.com 171 17th Street, NW Suite 1200 Atlanta, GA 30363 Telephone: (404) 525-8200	X	
William Skilling ⁴	c/o Barry A. Johnsrud, WSBA #21952 Email: barry.johnsrud@jacksonlewis.com 520 Pike Street, Suite 2300 Seattle, Washington 98101 Telephone: (206) 405-0404 Facsimile: (206) 405-4450 Justin A. Barnes Email: justin.barnes@jacksonlewis.com Kelli N. Church Email: kelli.church@jacksonlewis.com 171 17th Street, NW Suite 1200 Atlanta, GA 30363 Telephone: (404) 525-8200	X	
Karla Johnson	c/o Barry A. Johnsrud, WSBA #21952 Email: barry.johnsrud@jacksonlewis.com 520 Pike Street, Suite 2300 Seattle, Washington 98101 Telephone: (206) 405-0404	X	

⁴ IBM acknowledges that the Court has excluded the testimony of William Skilling and does not intend to introduce Mr. Skilling's testimony at trial, IBM simply lists him here in order to preserve the issue of the admissibility of his testimony for appeal.

Plaintiff contends that had the Court not granted his motion to strike Skilling's expert report, he would have also challenged Skilling's testimony on *Daubert* grounds and preserves his right to do so at a later date as necessary.

1		Facsimile: (206) 405-4450		
2		Justin A. Barnes		
3		Email: justin.barnes@jacksonlewis.com		
4		Kelli N. Church		
5		Email: kelli.church@jacksonlewis.com		
6		171 17th Street, NW		
		Suite 1200		
		Atlanta, GA 30363		
		Telephone: (404) 525-8200		
7	Jeff Larkin	c/o	X	
8		Barry A. Johnsrud, WSBA #21952		
9		Email: barry.johnsrud@jacksonlewis.com		
10		520 Pike Street, Suite 2300		
11		Seattle, Washington 98101		
12		Telephone: (206) 405-0404		
13		Facsimile: (206) 405-4450		
14		Justin A. Barnes		
15		Email: justin.barnes@jacksonlewis.com		
16		Kelli N. Church		
17		Email: kelli.church@jacksonlewis.com		
18		171 17th Street, NW		
19		Suite 1200		
20		Atlanta, GA 30363		
21		Telephone: (404) 525-8200		
22	Linda Kenny	c/o	X	
23		Barry A. Johnsrud, WSBA #21952		
24		Email: barry.johnsrud@jacksonlewis.com		
25		520 Pike Street, Suite 2300		
26		Seattle, Washington 98101		
27		Telephone: (206) 405-0404		
		Facsimile: (206) 405-4450		
		Justin A. Barnes		
		Email: justin.barnes@jacksonlewis.com		
		Kelli N. Church		
		Email: kelli.church@jacksonlewis.com		
		171 17th Street, NW		
		Suite 1200		
		Atlanta, GA 30363		
		Telephone: (404) 525-8200		
	Lisa Mihalik	c/o		X
		Barry A. Johnsrud, WSBA #21952		
		Email: barry.johnsrud@jacksonlewis.com		
		520 Pike Street, Suite 2300		

1		Seattle, Washington 98101 Telephone: (206) 405-0404 Facsimile: (206) 405-4450		
2				
3		Justin A. Barnes Email: justin.barnes@jacksonlewis.com		
4		Kelli N. Church Email: kelli.church@jacksonlewis.com		
5		171 17th Street, NW		
6		Suite 1200		
7		Atlanta, GA 30363 Telephone: (404) 525-8200		
8	Robert Finnecy	230 Sharp Hill Road Wilton, Connecticut 06897		X
9	Cynthia Alexander	c/o Barry A. Johnsrud, WSBA #21952 Email: barry.johnsrud@jacksonlewis.com		X
10		520 Pike Street, Suite 2300		
11		Seattle, Washington 98101		
12		Telephone: (206) 405-0404		
13		Facsimile: (206) 405-4450		
14		Justin A. Barnes Email: justin.barnes@jacksonlewis.com		
15		Kelli N. Church Email: kelli.church@jacksonlewis.com		
16		171 17th Street, NW		
17		Suite 1200		
18		Atlanta, GA 30363 Telephone: (404) 525-8200		
19	Dave Mitchell	c/o Barry A. Johnsrud, WSBA #21952 Email: barry.johnsrud@jacksonlewis.com		X
20		520 Pike Street, Suite 2300		
21		Seattle, Washington 98101		
22		Telephone: (206) 405-0404		
23		Facsimile: (206) 405-4450		
24		Justin A. Barnes Email: justin.barnes@jacksonlewis.com		
25		Kelli N. Church Email: kelli.church@jacksonlewis.com		
26		171 17th Street, NW		
27		Suite 1200		
		Atlanta, GA 30363 Telephone: (404) 525-8200		

1	Dorothy Copeland	707 Forest Avenue Mamaroneck, New York 10543		X
2	John Teltsch	c/o Barry A. Johnsrud, WSBA #21952 Email: barry.johnsrud@jacksonlewis.com 520 Pike Street, Suite 2300 Seattle, Washington 98101 Telephone: (206) 405-0404 Facsimile: (206) 405-4450		X
3		Justin A. Barnes Email: justin.barnes@jacksonlewis.com Kelli N. Church Email: kelli.church@jacksonlewis.com 171 17th Street, NW Suite 1200 Atlanta, GA 30363 Telephone: (404) 525-8200		
4				
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9				
10				
11	Rosalva Nunez	c/o Barry A. Johnsrud, WSBA #21952 Email: barry.johnsrud@jacksonlewis.com 520 Pike Street, Suite 2300 Seattle, Washington 98101 Telephone: (206) 405-0404 Facsimile: (206) 405-4450		X
12		Justin A. Barnes Email: justin.barnes@jacksonlewis.com Kelli N. Church Email: kelli.church@jacksonlewis.com 171 17th Street, NW Suite 1200 Atlanta, GA 30363 Telephone: (404) 525-8200		
13				
14				
15				
16				
17				
18				
19				
20				
21	Russell Mandel	26016 Misty Way Drive Tega Cay, South Carolina 29708		X
22	Stephen Leonard	c/o Barry A. Johnsrud, WSBA #21952 Email: barry.johnsrud@jacksonlewis.com 520 Pike Street, Suite 2300 Seattle, Washington 98101 Telephone: (206) 405-0404 Facsimile: (206) 405-4450		X
23		Justin A. Barnes Email: justin.barnes@jacksonlewis.com		
24				
25				
26				
27				

	Kelli N. Church Email: kelli.church@jacksonlewis.com 171 17th Street, NW Suite 1200 Atlanta, GA 30363 Telephone: (404) 525-8200		
Bernadette Dugan	c/o Barry A. Johnsrud, WSBA #21952 Email: barry.johnsrud@jacksonlewis.com 520 Pike Street, Suite 2300 Seattle, Washington 98101 Telephone: (206) 405-0404 Facsimile: (206) 405-4450 Justin A. Barnes Email: justin.barnes@jacksonlewis.com Kelli N. Church Email: kelli.church@jacksonlewis.com 171 17th Street, NW Suite 1200 Atlanta, GA 30363 Telephone: (404) 525-8200		X
Dominic Agostino	c/o Barry A. Johnsrud, WSBA #21952 Email: barry.johnsrud@jacksonlewis.com 520 Pike Street, Suite 2300 Seattle, Washington 98101 Telephone: (206) 405-0404 Facsimile: (206) 405-4450 Justin A. Barnes Email: justin.barnes@jacksonlewis.com Kelli N. Church Email: kelli.church@jacksonlewis.com 171 17th Street, NW Suite 1200 Atlanta, GA 30363 Telephone: (404) 525-8200		X

Pursuant to Rule 32, Defendant is also submitting deposition designations for Cindy Alexander, Dorothy Copeland, Robert Finnecy, Stephen Leonard, Russell Mandel, and John Teltsch, which includes Defendant's designations, Plaintiff's objections and counter-designations, and IBM's responses. In addition to the potential witnesses listed above, IBM

reserves the right to call any custodians of records for documents to be offered into evidence at trial. IBM reserves the right to call any witnesses identified in Plaintiff's witness list. IBM reserves the right to call any witness not identified on this list as impeachment or rebuttal witnesses. IBM reserves the right to object to portions of the testimony offered by any witnesses on the list. IBM reserves the right to amend or supplement this list upon review of Plaintiff's witness list or if any witnesses are discovered after the filing of this witness list, as necessary and consistent with the Federal Rules of Civil Procedure and local rules of this Court.⁵

IBM reserves the right to object to portions of the testimony of any witness offered via deposition by Plaintiff. IBM reserves the right to use additional deposition testimony as needed for purposes of impeachment, or for purposes such as refreshing recollection, or for other appropriate purposes allowed under the applicable rules.

VIII. DEFENDANT'S EXHIBITS

Pursuant to Fed. R. Civ. P. 26(a)(3)(A)(iii), the following list identifies documents and exhibits that IBM either expects to offer at trial or, as circumstances warrant, may offer at trial if the need arises, to the extent that the document or some portion thereof is admissible pursuant to the Federal Rules of Evidence, and provided that all appropriate measures are taken to ensure the confidentiality of any information contained within the exhibits that might be subject to the existing Stipulated Protective Order (ECF No. 37) or otherwise be protected from disclosure by statute or other law:

Ex. No.	Dep. Ex. No.	Bates Number	Description	Admissibility Stipulated	Authenticity Stipulated/Admissibility Disputed	Authenticity & Admissibility Disputed
201.	3	SCOTT	Scott	X		

⁵ Plaintiff contends that Defendant's reservations of rights contained in this paragraph go beyond what is permitted by the orders of this Court, the local rules, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence, as well as any relevant case law.

1			KINGSTON 000403	Kingston's Resume			
2	202.	4	IBM- Kingston000 024-27	Scott Kingston's Offer Letter	X		
3							
4	203.	5	IBM- Kingston000 021-22	Agreement Regarding Confidential Information, Intellectual Property, and Other Matters		FRE 401, 402, and 403. FRE 801 and 802	
5							
6							
7							
8	204.	6	IBM- Kingston000 232-264	Business Conduct Guidelines	X		
9							
10	205.	7	IBM- Kingston000 206-209	Scott Kingston's 1H2015 Incentive Plan Letter	X		
11							
12	206.	8	IBM- Kingston002 10-212	Scott Kingston's 2H2015 Incentive Plan Letter	X		
13							
14							
15	207.	9	IBM- Kingston002 13-215	Scott Kingston's 1H2016 Incentive Plan Letter	X		
16							
17							
18	208.	10	IBM- Kingston000 216-218	Scott Kingston's 2H2016 Incentive Plan Letter	X		
19							
20							
21	209.	11	IBM- Kingston000 219-221	Scott Kingston's 1H2017 Incentive Plan Letter	X		
22							
23							
24	210.	12	IBM- Kingston000 222-224	Scott Kingston's 2H2017 Incentive Plan Letter	X		
25							
26							
27	211.	13	IBM-	Scott	X		

1			Kingston000 225-227	Kingston's 1H2018 Incentive Plan Letter			
2							
3	212.	14	IBM- Kingston000 035-36	Scott Kingston Compensation Summary Report	X		
4							
5	213.	15	IBM- Kingston001 245-1264	One Channel Team Incentives Plans (PCRs, CSP and ISV Coverage, ESA Sales) 1st Half 2017	X		
6							
7							
8							
9							
10	214.	17	IBM- Kingston000 265-268	Incentives Roles and Responsibilitie s	X		
11							
12	215.	18	IBM- Kingston001 707-1714	Email chain re: ESA Help for Potential SAS deal	X		
13							
14	216.	19	IBM- Kingston001 758-1766	Email chain re: Qtr Close	X		
15							
16	217.	20	IBM- Kingston001 993	1H17 SAS Storage Transaction Commission Analysis	X		
17							
18							
19	218.	21	IBM- Kingston000 390-398	Achievement & Payment Review Pre- Checks	X		
20							
21	219.	22	IBM- Kingston001 567-1569	Donato Payment Approval	X		
22							
23	220.	24	IBM- Kingston003 462-3463	Email chain between Scott Kingston and Jerome Beard re: 300% Rule for Large Transactions	X		
24							
25							
26							
27							

1	221.	25	IBM-Kingston000 399-406	Investigation Report	X		
2	222.	29	IBM-Kingston000 269-281	Global Sales Incentives Sales Manager End-to-End Incentives Process Overview	X		
3	223.	30	IBM-Kingston002 710	Email from Jeff Larkin to Dorothy Copeland re: investigation report	X		
4	224.	31	IBM-Kingston001 663-1669	Linda Kenny notes on investigation report	X		
5	225.	35	IBM-Kingston002 614-2704	1H17 IBM WW Quota Setting Guidelines	X		
6	226.	38	IBM-Kingston002 232-2242	Email from Linda Kenny adding investigation report to consistency review agenda	X		
7	227.	50	IBM-Kingston002 370-2382	Email from Linda Kenny to Dorothy Copeland re: All approvals are in, time to take action	X		
8	228.	68	IBM-Kingston002 296-2301	Email communication s between Dorothy Copeland, Lisa Mihalik, and Stephen Leonard	X		

1				regarding investigation report			
2	229.	97	IBM-Kingston001 921-1924	Email chain regarding commission payments on SAS deal	X		
3							
4							
5	230.	98	IBM-Kingston001 925-1928	Email communication s regarding problems with commission payments on SAS deal	X		
6							
7							
8							
9	231.	99	IBM-Kingston002 841-2853	Email chain regarding background on SAS deal and Karla Johnson submitting allegation	X		
10							
11							
12							
13	232.	102	IBM-Kingston001 991-1992	Email communication from Maria Lipner to Christine Muckensturm regarding commission payments on SAS deal	X		
14							
15							
16							
17							
18							
19	233.	106	IBM-Kingston001 789-1793	Email chain regarding initial look at individuals requested to be paid on SAS deal	X		
20							
21							
22							
23	234.	107	IBM-Kingston002 828-2840	Email communication s regarding commission payouts on SAS deal	X		
24							
25							
26							
27							

1	235.	108	IBM-Kingston001 805-1811	Email communication s regarding commission payouts on SAS deal	X		
2							
3							
4	236.	110	IBM-Kingston001 825-1830	Email communication s regarding commission payouts on SAS deal	X		
5							
6							
7							
8	237.	N/A	IBM-Kingston003 973-3975	Jeff Larkin's notes from interview of Scott Kingston	X		
9							
10	238.	N/A	IBM-Kingston004 555-4570	Rebuttal Expert Report of Peter Nickerson		FRE 401, 402, and 403. FRE 801 and 802.	
11							
12							
13	239.	N/A	SCOTT KINGSTON 000237-248, 251, 256- 278, 306- 389, 395, 398	Documents Produced by Scott Kingston		FRE 401, 402, and 403. FRE 801 and 802.	
14							
15							
16							
17	240.	N/A	IBM-Kingston001 157-1159	Email Communicatio ns Regarding Commissions on HCL Deal		FRE 403. FRE 801 and 802.	
18							
19							
20	241.	N/A	SCOTT KINGSTON 000003-7	Documents Produced by Scott Kingston		FRE 403. FRE 801 and 802.	
21							
22	242.	N/A	IBM-Kingston001 959	Email Communicatio n Regarding ARB Investigation Decision		FRE 403. FRE 801 and 802.	
23							
24							
25							
26	243.	64	IBM-Kingston002 097	Email From Scott Kingston Regarding	X		
27							

			Required Information			
244.	N/A	IBM-Kingston004 182-4207	Expert report of William B. Skilling ⁶			FRE 401, 402, and 403. FRE 702 and 703. FRE 801 and 802. FRE 901.
245.	N/A	IBM-Kingston003 505-3511, 3518-3521, 3592-3597, 3622-3653, 3662-3710, 3749-3750	Emails Scott Kingston Forwarded Himself		Objection, to the extent IBM intends to present this exhibit for the purposes addressed in D.E. 78.	
246.	N/A	IBM-Kingston38-205	Payroll Records			FRE 401, 402, and 403. FRE 801 and 802. FRE 901.
247.	N/A	IBM-Kingston303 4-3036	FMS Statements			FRE 401, 402, and 403. FRE 801 and 802. FRE 901.
248.	N/A	N/A	Printout from Whitfield Bryson website			FRE 106.

⁶ IBM acknowledges that the Court has excluded the report of William Skilling and does not intend to introduce Mr. Skilling's report at trial, IBM simply lists it here in order to preserve the issue of the admissibility of his report for appeal.

1 In addition to the potential exhibits identified above, IBM reserves the right to designate
 2 as a potential exhibit any document or exhibit identified in Plaintiff's exhibit list. IBM reserves
 3 the right to use at trial any documents or exhibits not identified on this list for purposes of
 4 impeachment or rebuttal. IBM reserves the right to object to portions of the documents or
 5 exhibits that are contained on this exhibit list. IBM reserves the right to amend or supplement
 6 this list upon review of Plaintiff's exhibit list or if any documents or exhibits are discovered
 7 and/or prepared after the filing of this exhibit list, as necessary and consistent with the Federal
 8 Rules of Civil Procedure and local rules of this Court.

9 ORDER OF THE COURT

10 This case is scheduled for trial before a jury on April 5, 2021, at 9:00 a.m. This order
 11 has been approved by the parties as evidenced by the signatures of their counsel. This order
 12 shall control the subsequent course of the action unless modified by a subsequent order. As
 13 indicated during the March 25, 2021 pretrial conference, the parties may submit an amended,
 14 agreed exhibit list to replace the exhibit list in this Order. This order shall not be further
 15 amended except by order of the court pursuant to agreement of the parties or to prevent
 16 manifest injustice.

17 SO ORDERED.

18 This 25th day of March, 2021.

19
 20 

21 Marsha J. Pechman
 22 United States Senior District Court Judge

23
 24 RESPECTFULLY SUBMITTED AND DATED this 25th day of March, 2021.

25 TERRELL MARSHALL LAW
 26 GROUP PLLC

JACKSON LEWIS P.C.

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